

House File 681 - Introduced

HOUSE FILE _____
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 62)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring employers to provide notice of business closings
2 and mass layoffs and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1438HV 83
5 ak/rj/5

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1 1 Section 1. NEW SECTION. 84C.1 TITLE.
1 2 This chapter shall be known as the "Iowa Worker Adjustment
1 3 and Retraining Notification Act".
1 4 Sec. 2. NEW SECTION. 84C.2 DEFINITIONS.
1 5 For the purposes of this chapter:
1 6 1. "Aggrieved employee" means an employee who has worked
1 7 for the employer ordering the business closing or mass layoff
1 8 and who, as a result of the failure by the employer to comply
1 9 with section 84C.3, did not receive timely notice either
1 10 directly or through the employee's representative.
1 11 2. "Business closing" means the permanent or temporary
1 12 shutdown of a single site of employment of one or more
1 13 facilities or operating units that will result in an
1 14 employment loss for twenty-five or more employees, other than
1 15 part-time employees.
1 16 3. "Department" means the department of workforce
1 17 development.
1 18 4. "Employee" means a worker who may reasonably expect to
1 19 experience an employment loss as a consequence of a proposed
1 20 business closing or mass layoff by an employer.
1 21 5. "Employer" means a person who employs twenty-five or
1 22 more employees, excluding part-time employees.
1 23 6. "Employment loss" means an employment termination,
1 24 other than a discharge for cause, voluntary separation, or
1 25 retirement; a layoff exceeding six months; or a reduction in
1 26 hours of more than fifty percent of work of individual
1 27 employees during each month of a six-month period.
1 28 "Employment loss" does not include instances when a business
1 29 closing or mass layoff is the result of the relocation or
1 30 consolidation of part or all of the employer's business and,
1 31 before the business closing or mass layoff, the employer
1 32 offers to transfer the employee to a different site of
1 33 employment within a reasonable commuting distance with no more
1 34 than a six-month break in employment.
1 35 7. "Mass layoff" means a reduction in employment force
2 1 that is not the result of a business closing and results in an
2 2 employment loss at a single site of employment during any
2 3 thirty-day period of twenty-five or more employees, other than
2 4 part-time employees.
2 5 8. "Part-time employee" means an employee who is employed
2 6 for an average of fewer than twenty hours per week or an
2 7 employee, including a full-time employee, who has been
2 8 employed for fewer than six of the twelve months preceding the
2 9 date on which notice is required.
2 10 9. "Representative" means an exclusive representative of
2 11 employees within the meaning of section 9(a) of the federal
2 12 National Labor Relations Act, 29 U.S.C. } 151 et seq., and the
2 13 federal Railway Labor Act, 45 U.S.C. } 151 et seq.
2 14 10. "Single site of employment" refers to a single
2 15 location or a group of contiguous locations, such as a group
2 16 of structures that form a campus or business park or separate
2 17 facilities across the street from each other.
2 18 Sec. 3. NEW SECTION. 84C.3 NOTICE == REQUIREMENTS.

2 19 1. a. An employer who plans a business closing or a mass
2 20 layoff shall not order such action until the end of a
2 21 thirty-day period which begins after the employer serves
2 22 written notice of such action to the affected employees or
2 23 their representatives and to the department. However, if an
2 24 applicable collective bargaining agreement designates a
2 25 different notice period, the notice period in the collective
2 26 bargaining agreement shall govern. The employer shall provide
2 27 notice to the department if the worker is covered by a
2 28 collective bargaining agreement.

2 29 b. An employer who has previously announced and carried
2 30 out a short-term mass layoff of six months or less which is
2 31 extended beyond six months due to business circumstances not
2 32 reasonably foreseeable at the time of the initial mass layoff
2 33 is required to give notice when it becomes reasonably
2 34 foreseeable that the extension is required. A mass layoff
2 35 extending beyond six months from the date the mass layoff
3 1 commenced for any other reason shall be treated as an
3 2 employment loss from the date of commencement of the mass
3 3 layoff.

3 4 c. In the case of the sale of part or all of a business,
3 5 the seller is responsible for providing notice of any business
3 6 closing or mass layoff which will take place up to and on the
3 7 effective date of the sale. The buyer is responsible for
3 8 providing notice of any business closing or mass layoff that
3 9 will take place thereafter.

3 10 2. a. Notice from the employer to the affected employees
3 11 or their representatives and to the department shall be in
3 12 written form and shall contain the following:

3 13 (1) The name and address of the employment site where the
3 14 business closing or mass layoff will occur, and the name and
3 15 telephone number of a company official to contact for further
3 16 information.

3 17 (2) A statement as to whether the planned action is
3 18 expected to be permanent or temporary and, if the entire
3 19 business is to be closed, a statement to that effect.

3 20 (3) The expected date of the first employment loss and the
3 21 anticipated schedule for employment losses.

3 22 (4) The job titles of positions to be affected and the
3 23 names of the employees currently holding the affected jobs.
3 24 The notice to the department shall also include the addresses
3 25 of the affected employees. The department shall maintain the
3 26 confidentiality of the names and addresses of employees
3 27 received by the department.

3 28 b. The notice may include additional information useful to
3 29 the employees, such as information about available dislocated
3 30 worker assistance, and, if the planned action is expected to
3 31 be temporary, the estimated duration, if known.

3 32 3. Any reasonable method of delivery to the affected
3 33 employees or their representatives, and the department which
3 34 is designed to ensure receipt of notice of at least thirty
3 35 days before the planned action is acceptable. In the case of
4 1 notification directly to affected employees, insertion of
4 2 notice into pay envelopes is a viable option.

4 3 Sec. 4. NEW SECTION. 84C.4 NOTICE == EXEMPTIONS, SPECIAL
4 4 CIRCUMSTANCES.

4 5 1. STRIKE OR LOCKOUT. If a business closing or mass
4 6 layoff constitutes a strike or constitutes a lockout not
4 7 intended to evade the requirements of this chapter, notice is
4 8 not required to be given by the employer. This chapter does
4 9 not require an employer to serve written notice when
4 10 permanently replacing an employee who is deemed to be an
4 11 economic striker under the federal National Labor Relations
4 12 Act. This chapter shall not be deemed to validate or
4 13 invalidate any judicial or administrative ruling relating to
4 14 the hiring of permanent replacements for economic strikers
4 15 under the federal National Labor Relations Act. If an
4 16 employer hires temporary workers to replace employees during
4 17 the course of a strike or lockout and later terminates these
4 18 temporary workers at the conclusion of the strike or lockout,
4 19 this chapter does not require an employer to serve written
4 20 notice on the terminated temporary workers.

4 21 2. ROLLING LAYOFFS.

4 22 a. When affected employees will not be terminated on the
4 23 same date, the date of the first individual employment loss
4 24 within the thirty-day notice period triggers the notice
4 25 requirement. An employee's last day of employment is
4 26 considered the date of that employee's layoff. The first and
4 27 subsequent groups of terminated employees are entitled to a
4 28 full thirty days' notice.

4 29 b. An employer shall give notice if the number of

4 30 employment losses of two or more actions in any ninety=day
4 31 period triggers the notice requirements in section 84C.3 for a
4 32 business closing or a mass layoff. An employer is not
4 33 required to give notice if the number of employment losses
4 34 from one action in a thirty=day period does not meet the
4 35 requirements of section 84C.3. All employment losses in any
5 1 ninety=day period shall be aggregated to trigger the notice
5 2 requirement unless the employer demonstrates to the department
5 3 that the employment losses during the ninety=day period are
5 4 the result of separate and distinct actions and causes.

5 5 3. EXTENDED NOTICE. Additional notice is required if the
5 6 date or schedule of dates of a planned business closing or
5 7 mass layoff is extended beyond the date or the ending date of
5 8 any period announced in the original notice.

5 9 a. If the postponement is for less than thirty days, the
5 10 additional notice shall be given as soon as possible to the
5 11 affected employees or their representatives and the department
5 12 and shall include reference to the earlier notice, the date to
5 13 which the planned action is postponed, and the reasons for the
5 14 postponement. The notice shall be given in a manner which
5 15 will provide the information to all affected employees.

5 16 b. If the postponement is for more than thirty days, the
5 17 additional notice shall be treated as new notice subject to
5 18 the provisions of section 84C.3.

5 19 4. FALTERING COMPANY. An exception to the thirty=day
5 20 notice applies to business closings but not to mass layoffs if
5 21 the requirements of this subsection are met and the exception
5 22 shall be narrowly construed.

5 23 a. An employer must have been actively seeking capital or
5 24 business at the time that the thirty=day notice would have
5 25 been required by seeking financing or refinancing through the
5 26 arrangement of loans or the issuance of stocks, bonds, or
5 27 other methods of internally generated financing, or by seeking
5 28 additional money, credit, or business through any other
5 29 commercially reasonable method. The employer must identify
5 30 specific actions taken to obtain capital or business.

5 31 b. The employer must, at the time notice is actually
5 32 given, provide a statement of explanation for reducing the
5 33 notice period in addition to the other notice requirements in
5 34 section 84C.3.

5 35 c. There must have been a realistic opportunity to obtain
6 1 the financing or business sought.

6 2 d. The financing or business sought must have been
6 3 sufficient, if obtained, to have enabled the employer to avoid
6 4 or postpone the shutdown. The employer must be able to
6 5 objectively demonstrate that the amount of capital or the
6 6 volume of new business sought would have enabled the company
6 7 to keep the facility, operating unit, or site open for a
6 8 reasonable period of time.

6 9 e. The employer reasonably and in good faith must have
6 10 believed that giving the required notice would have precluded
6 11 the employer from obtaining the needed capital or business.
6 12 The employer must be able to objectively demonstrate that the
6 13 employer reasonably thought that a potential customer or
6 14 source of financing would have been unwilling to provide the
6 15 new business or capital if notice had been given. This
6 16 condition may be satisfied if the employer can show that the
6 17 financing or business source would not choose to do business
6 18 with a troubled company or with a company whose workforce
6 19 would be looking for other jobs.

6 20 5. UNFORESEEABLE BUSINESS CIRCUMSTANCE. An exception to
6 21 the thirty=day notice applies to business closings and to mass
6 22 layoffs if the requirements of this subsection are met.

6 23 a. Business circumstances occurred that were not
6 24 reasonably foreseeable at the time that the thirty=day notice
6 25 would have been required.

6 26 b. The employer must, at the time notice is actually
6 27 given, provide a statement of explanation for reducing the
6 28 notice period in addition to the other notice requirements in
6 29 section 84C.3.

6 30 c. An important indicator of a reasonably unforeseeable
6 31 business circumstance is that the circumstance is caused by
6 32 some sudden, dramatic, and unexpected action or condition
6 33 outside the employer's control.

6 34 d. The employer must exercise commercially reasonable
6 35 business judgment as would a similarly situated employer in
7 1 predicting the demands of the employer's particular market.
7 2 The employer is not required to accurately predict general
7 3 economic conditions that also may affect demand for products
7 4 or services.

7 5 6. NATURAL DISASTER. An exception to the thirty=day

7 6 notice applies to business closings and to mass layoffs if the
7 7 requirements of this subsection are met.

7 8 a. A natural disaster occurred at the time notice would
7 9 have been required.

7 10 b. The employer must, at the time notice is actually
7 11 given, provide a statement of explanation for reducing the
7 12 notice period in addition to the other requirements to notice
7 13 in section 84C.3.

7 14 c. Floods, earthquakes, droughts, storms, tornadoes, and
7 15 similar effects of nature are natural disasters under this
7 16 subsection.

7 17 d. An employer must be able to demonstrate that the
7 18 business closing or mass layoff is a direct result of the
7 19 natural disaster.

7 20 e. If a business closing or mass layoff occurs as an
7 21 indirect result of a natural disaster, this exception does not
7 22 apply but the unforeseeable business circumstance exception
7 23 may be applicable.

7 24 Sec. 5. NEW SECTION. 84C.5 ENFORCEMENT AND PENALTIES.

7 25 1. The department shall adopt rules pursuant to and
7 26 consistent with chapter 17A regarding investigations to
7 27 determine whether an employer has violated any provisions of
7 28 this chapter. A determination by the department that a
7 29 violation has occurred shall be considered final agency action
7 30 under chapter 17A.

7 31 2. An employer who violates the provisions of section
7 32 84C.3 with respect to the department shall be subject to a
7 33 civil penalty of not more than one hundred dollars for each
7 34 day of the violation. Any penalties collected by the
7 35 department shall be forwarded to the treasurer of state and
8 1 deposited in the general fund of the state.

8 2 3. The penalties provided for in this section shall be the
8 3 exclusive remedies for any violation of this chapter. Under
8 4 this chapter, a court shall not have authority to enjoin a
8 5 business closing or mass layoff.

8 6 EXPLANATION

8 7 This bill creates the Iowa worker adjustment and retraining
8 8 notification Act. The bill requires employers to notify
8 9 employees or their representatives and the department of
8 10 workforce development of business closings that result in the
8 11 layoff of 25 or more full-time employees and mass layoffs that
8 12 are reductions in the workforce of at least 25 employees in a
8 13 30-day period.

8 14 NOTICE. An employer is required to give notice to
8 15 employees or their representatives who will be affected by a
8 16 business closing or mass layoff and the department in writing
8 17 30 days before ordering such actions. An employer who
8 18 announces a short-term mass layoff of less than six months but
8 19 which is extended more than six months, must also give proper
8 20 written notice when it becomes reasonably foreseeable that the
8 21 mass layoff will be extended beyond six months.

8 22 If a business is sold in whole or in part, the seller is
8 23 responsible for providing written notice of any business
8 24 closings or mass layoffs which will take place up to and on
8 25 the date of sale. The buyer is responsible for proper
8 26 notification of such actions thereafter.

8 27 The requirements for proper notice include the name and
8 28 address of the employment site where the business closing or
8 29 mass layoff will occur; the name and telephone number of a
8 30 company official to contact for further information; a
8 31 statement about whether the planned action is expected to be
8 32 permanent or temporary; the expected date of the first
8 33 separation and the anticipated schedule for making
8 34 separations; and the job titles of positions to be affected
8 35 and the names of the employees currently holding the affected
9 1 jobs. Information provided to the department about employees
9 2 shall remain confidential. Notice may also include additional
9 3 information about available dislocated worker assistance and,
9 4 if the planned action is temporary, the estimated duration of
9 5 the planned action.

9 6 Any reasonable method of delivery to affected employees or
9 7 their representatives and the department that will ensure
9 8 receipt of the notice at least 30 days before the planned
9 9 action is allowed.

9 10 STRIKE OR LOCKOUT. If a business closing or mass layoff is
9 11 the result of a strike or lockout that is not intended to
9 12 evade the requirements of new Code chapter 84C, the employer
9 13 is not required to give notice. An employer is not required
9 14 to give notice under new Code chapter 84C when permanently
9 15 replacing an economic striker under the federal National Labor
9 16 Relations Act. An employer who hires temporary workers to

9 17 replace employees who are on strike or lockout is not
9 18 obligated under this Code chapter to provide written notice of
9 19 the temporary workers' termination.
9 20 ROLLING LAYOFFS. If an employer will not be laying off all
9 21 employees on the same date, the date of the first employee to
9 22 be laid off triggers the 30-day notice requirement. An
9 23 employer shall give notice if the number of employment losses
9 24 of two or more actions in any 90-day period triggers the
9 25 notice requirements in Code section 84C.3 for a business
9 26 closing or a mass layoff. All employment losses in any 90-day
9 27 period count together toward the notice requirement levels
9 28 unless the employer demonstrates to the department that the
9 29 employment losses during the 90-day period are the result of
9 30 separate and distinct actions and causes.
9 31 EXTENDED NOTICE. Additional notice is required when the
9 32 date or dates of a business closing or mass layoff are
9 33 extended beyond the end date of any period announced in the
9 34 original notice. If the postponement is for less than 30
9 35 days, additional notice must be given to the affected
10 1 employees and the department as soon as possible and must
10 2 include the new date of the proposed action and the reasons
10 3 for the postponement. If the postponement is for more than 30
10 4 days, the additional notice must be treated as a new notice,
10 5 subject to the provisions of Code section 84C.3.
10 6 FALTERING COMPANY. An employer with a faltering company
10 7 may be exempted from the 30-day notice requirement for a
10 8 business closing but not a mass layoff, but is still required
10 9 to provide proper notice, if the employer was actively seeking
10 10 capital or business at the time the 30-day notice was
10 11 required. The employer must, at the time notice is actually
10 12 given, provide an explanation for reducing the notice period.
10 13 The employer must show that the capital or business sought
10 14 would have been sufficient if obtained to have enabled the
10 15 employer to avoid or postpone the shutdown of the business.
10 16 The employer must also demonstrate that the employer
10 17 reasonably and in good faith believed that giving notice would
10 18 have prevented the employer from obtaining the capital or
10 19 business.
10 20 UNFORESEEABLE CIRCUMSTANCE. An employer that experiences
10 21 unforeseeable business circumstances may be exempted from the
10 22 30-day notice requirement, but is still required to provide
10 23 proper notice, for a business closing or a mass layoff. The
10 24 employer, at the time notice is actually given, must provide
10 25 an explanation for reducing the notice period. An
10 26 unforeseeable business circumstance is caused by a sudden,
10 27 dramatic, and unexpected action or condition outside the
10 28 employer's control.
10 29 NATURAL DISASTER. An employer that experiences a natural
10 30 disaster may be exempted from the 30-day notice requirement,
10 31 but is still required to provide proper notice, for a business
10 32 closing or a mass layoff. The employer, at the time notice is
10 33 actually given, must provide an explanation for reducing the
10 34 notice period. Natural disasters include floods, earthquakes,
10 35 droughts, storms, tornadoes, and similar effects of nature.
11 1 An employer must demonstrate that the business closing or mass
11 2 layoff is a direct result of a natural disaster. If the
11 3 business closing or mass layoff occurs as an indirect result
11 4 of a natural disaster, this exemption does not apply, but the
11 5 unforeseeable business circumstance exemption may apply.
11 6 ENFORCEMENT AND PENALTIES. The department shall adopt
11 7 rules consistent with Code chapter 17A relating to
11 8 investigations to determine whether an employer has violated
11 9 new Code chapter 84C. A determination by the department about
11 10 whether a violation has occurred is a final agency action.
11 11 An employer who violates Code section 84C.3 with respect to
11 12 the department is subject to a civil penalty of not more than
11 13 \$100 for each day of the violation. Any penalties collected
11 14 by the department shall be forwarded to the treasurer of state
11 15 and deposited in the general fund of the state.
11 16 These penalties are the exclusive remedies for violations
11 17 in new Code chapter 84C. Under this new Code chapter, a court
11 18 shall not be able to enjoin a business closing or mass layoff.
11 19 LSB 1438HV 83
11 20 ak/rj/5